

V. REMARKS

Status of the Claims

Claims 18,19,21,22,26,27,29,31-34,36,38-41,43,45,46, are amended and claims 47 and 48 are added. Claims 18-48 are presented for further consideration.

The above amendments to the claims are submitted herein, after final rejection in response to the Examiner's objections to Claims 18,21,26,29,31-33,38,39,40,45, and 46 and to conform other claims for consistency of language. The claims are not altered in scope and require no further search. Applicant submits, that such amendments are proper after final rejection and should be entered by the Examiner. In addition the amendments place the claims in better condition for appeal by eliminating issues.

Further, in rejecting the claims, the Examiner has cited, for the first time, the reference Grohn, as a basis for the obviousness rejections. The citation of this new reference was not necessitated by Applicant's prior amendments. The subject-matter of claims 22, 34 and 41 corresponds to the subject-matter of the former claim 6, only a formal amendment was made to claim 22 in order to keep the claim language logical. Thus, the introduction of Grohn is not necessitated by applicant's amendment and the finality of the Office Action is improper. MPEP section 706.07(c) states:

"While the rules no longer give to an applicant the right to "amend as often as the examiner presents new references or reasons for rejection," present practice does not sanction hasty and ill-considered final rejections. The applicant, who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application."

The Examiner is respectfully requested to reconsider the final nature of the pending office action and his rejection in view of the above amendments and the following arguments. The entering of the above amendments will permit the clarification of the issues for appeal or the allowance of the claims.

Applicant submits the attached Terminal Disclaimer to overcome the provisional rejection, under the judicially created doctrine of obviousness-type double patenting, based on the commonly owned copending Application Serial No. 09/780,529.

Applicant has submitted a revised figure 7 to overcome the objections to the drawings. In particular the identification of the counters is clarified and the related steps more appropriately labeled.

Summary of the Office Action

Claims 18,20,21,23,25,26,28-30,32,33,35-37,39,40,42-44, and 46 stand rejected under 35USC102(e) on the basis of the cited reference "3GTS 25.323 of 3GPP" (3GPP'323). Claims 22,34, and 41 stand rejected under 35USC103(a) based on the reference 3GPP'323 in view of the newly cited reference Grohn, U.S. Patent No. 6,405,337. Claims 24,31,38, and 45 stand rejected under 35USC103(a) based on the reference 3GPP'323 in view of the teaching of Widegren U.S. Patent No. 6,374,112. The Examiner is respectfully requested to reconsider his rejection in view of the above amendments and the following remarks. Claims 19 and 27 are indicated to contain allowable subject matter if written in dependent form.

Discussion of the Cited Reference

The Examiner continues to cite, 3GPP TS 25.323 V.3.0.0 (1999-12) "Packet Data Convergence Protocol (PDCP) Specification" (3GPP) as the primary reference in support of the rejections based on anticipation and obviousness. The reference 3GPP discloses acknowledged and unacknowledged data packet transmission, wherein the transmitting entity (either the UE or RNC) attaches a data packet number, defined by means of a counter, to each data packet to be transmitted.

The Examiner still argues, based on the fact that the PDU numbering unit is incorporated both in UE and RNC, that the receiving entity would define a data packet number for the received data packets by means of a counter. However, the receiving entity does not operate in that manner, contrary to the Examiner's interpretation, the receiving entity uses the data packet numbers already included in the received data packets (attached by the transmitting entity). The PDU numbering unit is incorporated both in UE and RNC, since both of them can operate as a transmitting entity, but the PDU numbering unit is used only when transmitting data packets, but not when receiving data packets.

In the system of the reference 3GPP, the transmitting entity attaches a data packet number to each data packet to be transmitted (chap. 5.3), which increases the load in data transmission because an additional byte is transmitted in each data packet. This procedure is defined in the present application as a problem underlying the present invention.

In the system described in the independent claims of this application, the convergence protocol packet number defined by the transmitter's counter is arranged to be added to the convergence protocol packet to be sent in response to performance of a predetermined process of the telecommunication system, and the value of the receiver's counter is arranged to be updated to correspond to said convergence protocol packet number. In other words, regardless of the fact that all missing or erroneous data packets cannot be transmitted to the receiver, the receiver's counter can be synchronised to the transmitter's counter in such a way that the convergence protocol packet number is attached to the data packet to be sent only when a certain process like discard of data packet or handover takes place. Then the receiver can synchronise its counter with the transmitter's counter and the data packet transmission can be continued with new data packets. The convergence protocol packet numbers are only attached to very few data packets, due to which the arrangement causes no extra load for the system, but at the same time a fast resynchronisation of the system can preferably guaranteed.

The reference 3GPP does not disclose the step of adding the convergence protocol packet number defined by the transmitter's counter to the convergence protocol packet to be sent in response to performance of a predetermined process of the telecommunication system, or a following step of updating the value of the receiver's counter to correspond to said convergence protocol packet number (after asynchronous operation of the receiver's counter due to lost convergence protocol packets).

Applicant submits that the Examiner reference to PIDs as convergence protocol packet numbers is inaccurate. PIDs have nothing to do with convergence protocol packet numbers, but they

relate to defining a correct header compression scheme for the data packets.

The Issue of Anticipation

The Examiner is reminded that the anticipation analysis requires a positive answer to the question of whether the system of the reference 3GPP would infringe the claims of this application if it were later.

Independent claim 18 of this application states as follows:

"adding the transmit convergence protocol packet number defined by the transmitting unit's counter to the convergence protocol packet to be sent in response to performance of a predetermined process of the telecommunications system; and

updating the value of the receiving unit's counter to correspond to said transmit data packet number."

Since the system of the cited reference cannot perform this step, there can be no infringement of the subject claims. Therefore, the reference 3GPP does not support the rejection based on anticipation with respect to claim 18. Equivalent language is contained in all of the independent claims and therefore this applies to all of the claims of this application.

The Issue of Obviousness

It is well settled that in order to establish a prima facie case for obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, without reference to the disclosure of this application.

Applicant submits that the above described deficiencies of the primary reference 3GPP are not remedied by the proposed

combination with the teaching of the references Grohn or Widegren. The combined references do not therefore support a prima-facie case of obviousness. The modification of the teachings of Grohn or Widegren, in order to obtain the invention, as described in the claims submitted herein, would not have been obvious to one skilled in the art.

Further with respect to the obviousness rejections, it is submitted that 3GPP reference is silent about a situation, wherein all data packets cannot be transmitted to the receiver regardless of several attempts of retransmission and, at the same time, the transmission of the following data packets should be continued in a synchronous way. 3GPP does not address the problem, and accordingly it does not teach a skilled man to solve it. On the contrary, the reference 3GPP teaches to attach a data packet number to each data packet to be transmitted, which results in a wasteful use of resources. In addition, the Examiner's incorrect reference to PIDs as convergence protocol packet numbers also invalidates a combination of the system of 3GPP and the system of the reference Grohn.

For all of the above reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge \$180.00 as payment for an additional dependent claim and payment of a Terminal Disclaimer fee and any additional fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

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5/23/05
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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted by facsimile to 703-872-9306 the date indicated below, addressed to the Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450

Date: 5/23/05

signature: Shane Murphy
Person Making Deposit

III. DRAWING AMENDMENTS

In the drawing, please replace figure 7 with the following revised figure 7.